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10 DREYER'S GRAND ICE CREAM, INC.

11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 SKYE ASTIANA, *et al.*,
16 Plaintiffs,

17 vs.

18 DREYER'S GRAND ICE CREAM, INC.,
19 Defendant.

) Case No. C11-02910 EMC
) consolidated with
) Case No. C11-3164 EMC
)
) The Honorable Edward M. Chen
)
) **DEFENDANT DREYER'S GRAND ICE**
) **CREAM, INC.'S REQUEST FOR JUDICIAL**
) **NOTICE IN SUPPORT OF MOTION TO**
) **DISMISS FIRST AMENDED**
) **CONSOLIDATED COMPLAINT;**
) **DECLARATION OF LEANNE M.**
) **KNOWLSEN; EXHIBITS 1-6**

)
) Date: June 29, 2012
) Time: 1:30 p.m.
) Dept.: Courtroom 5, 17th Floor
)

) [Proposed Order Attached]
)
)

1 Pursuant to Federal Rule of Evidence 201, and in connection with its concurrently filed Motion
2 to Dismiss the First Amended Consolidated Complaint (“FACC”), defendant Dreyer’s Grand Ice
3 Cream, Inc. (“Dreyer’s”) respectfully requests that the Court take judicial notice of the following
4 attached exhibits:

5 1. **Exhibit 1** is a true and correct copy of the First Amended Complaint filed on December
6 8, 2010 in the United States District Court for the Northern District of California in the *Astiana v. Ben*
7 *& Jerry’s Homemade, Inc.* action, Case No. 10-04387 (N.D. Cal.), downloaded from the court’s
8 electronic docket (ECF No. 20).

9 2. **Exhibit 2** is a true and correct copy of the packaging label for Ben & Jerry’s Cherry
10 Garcia® ice cream, 473 ml carton, filed as Exhibit B to Defendant Ben & Jerry’s Homemade, Inc.’s
11 Request for Judicial Notice in Support of Its Motion to Dismiss, on November 24, 2010 in the United
12 States District Court for the Northern District of California in the *Astiana v. Ben & Jerry’s Homemade,*
13 *Inc.* action, Case No. 10-04387 (N.D. Cal.), downloaded from the court’s electronic docket (ECF
14 No. 19-2).

15 3. **Exhibit 3** is a true and correct copy of the packaging label for Häagen-Dazs chocolate
16 chip cookie dough ice cream, 14 fl oz cup, that was in use on June 14, 2011, the date the original
17 Complaint in this action was filed.

18 4. **Exhibit 4** is a true and correct copy of the initial Complaint filed on September 29,
19 2010 in the United States District Court for the Northern District of California in the *Astiana v. Ben &*
20 *Jerry’s Homemade, Inc.* action, Case No. 10-04387 (N.D. Cal.), downloaded from the court’s
21 electronic docket (ECF No. 1).

22 5. **Exhibit 5** is a true and correct copy of the April 6, 2011 Transcript of Proceedings
23 (Defendant’s Motion to Dismiss) in the United States District Court for the Northern District of
24 California in the *Astiana v. Ben & Jerry’s Homemade, Inc.* action, Case No. 10-04387 (N.D. Cal.).

25 6. **Exhibit 6** is a true and correct copy of the First Amended Complaint filed on April 6,
26 2012 in the United States District Court for the Northern District of California in the *Littlehale v. The*
27
28

1 *Hain Celestial Group* action, Case No. 11-06342 (N.D. Cal.), downloaded from the court's electronic
 2 docket (ECF No. 29).

3 **Grounds for Judicial Notice**

4 Exhibit 3 should be judicially noticed because it is a copy of one of the allegedly misleading
 5 packaging labels at issue in the above-captioned action, which are referred to, and thus incorporated by
 6 reference, in the FACC at Ex. 11 p. 3 of 9. *See Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994)
 7 (“[D]ocuments whose contents are alleged in a complaint and whose authenticity no party questions,
 8 but which are not physically attached to the pleading, may be considered in ruling on a Rule 12(b)(6)
 9 motion to dismiss.”), *overruled on other grounds by Galbraith v. County of Santa Clara*, 307 F.3d
 10 1119, 1127 (9th Cir. 2002). The attached declaration of Leanne M. Knowlden authenticates Exhibits 3
 11 as a true and correct copy of the business records of Dreyer's.

12 Exhibits 1, 2, 4, 5 and 6 should be judicially noticed because they are court filings, which are
 13 matters of public record. *See* Fed R. Evid. 201(b) (court may take notice of documents “capable of
 14 accurate and ready determination by resort to sources whose accuracy cannot reasonably be
 15 questioned.”); *Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) (“We
 16 may take judicial notice of court filings and other matters of public record”).

17
 18 Dated: May 1, 2012

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Dale J. Giali

21 By: /s/ Dale J. Giali

22 Dale J. Giali

23 Attorneys for Defendant

Dreyer's Grand Ice Cream, Inc.

